

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

November 12, 2015

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Siburn was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Adoption of Resolutions:

App.#22-15: Lillian Court Assoc.LLC, Mountain Avenue, Block 3303, Lot 12 (R-20 Zone)

Proposed construction of a new single family house on this nonconforming vacant lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient side yard and combined side yard setbacks. In addition, "other coverage" would exceed the 10% maximum allowed, and "total lot coverage" would exceed the 25% allowed. Nonconforming issues are lot area and lot width.

A motion was made by Mr. Miller, seconded by Mr. Delia, to adopt the above Resolution. The voice vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi voting in favor.

App.#23-15: Georgene Granholm, 49 Shadow Lane, Block 504, Lot 64 (R-15 Zone)

Application for hot tub on an existing deck. Relief is needed from Section 3.1.8. "Decks" of the Municipal Land Use Procedures Ordinance which prohibits hot tubs from being located on any exterior deck. Nonconforming issues are lot area, lot width, principal front yard setback, other lot coverage, total lot coverage, existing shed size and existing shed accessory setbacks.

A motion was made by Mr. Boyer, seconded by Mr. Nappi, to adopt the above Resolution. The voice vote was unanimous with Mr. Miller, Mr. Boyer, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor.

Adoption of Minutes

October 22, 2015

A motion was made by Mr. Mustacchi, seconded by Mr. Delia, and carried by unanimous voice vote to adopt the minutes of the October 22, 2015 Regular Meeting as presented.

Informal Review of Submitted Applications:

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, Bl.1901, L. 40

Anco Environmental Services, Inc. ("Anco") is a company involved in oil tank removal and installation and also operates as a clean-up contractor. The property is also used for vehicle and equipment repair and as a storage yard for equipment. The fuel oil that is removed is retained in a tanker truck at 40 Russo Place and then sold. A company related to Anco is engaged in the cleaning and servicing of oil burners. The owner of the property was cited for noncompliance of Section 17.1.1 – "Use of land without receiving all required permits of approval." A zoning permit was not issued for the current use. The applicant is requesting approval to continue to operate its business – which is not an approved use – and would like to obtain all variances needed (including relief from Sections 17.1.1 "Prohibitions," Section 6.3.6A "Permitted Principal Uses," Section 6.3.6B "Permitted Accessory Uses," Section 6.1.1B "Schedule of General Regulations," Section 6.4.3A.6 "Nuisance Factors," Section 6.4.3B.26., and Section 6.4.3B.48.) There are also accessory structures – such as fuel tanks – on the property that do not comply with the required setbacks and/or permitted accessory uses. (LI-Zone)

Jay Bohn, attorney for the applicant, stated that the applicant has reviewed Mr. Mistretta's memorandum with regard to the application and will submit a written

response. The applicant has decided not to proceed with the previously proposed easement and the entire development will be on the applicant's property. In addition, a number of Mr. Mistretta's comments will be dealt with in the next revision of the plans. An application will be submitted to the DEP to deal with the environmental and drainage issues. That process is estimated to take four to six months.

Discussion took place and it was suggested that when this applicant files a revised application a site visit be scheduled as part of the public hearing.

Applications for Review:

CARRIED FROM OCTOBER 22, 2015, WITHOUT FURTHER NOTICE:

App.#24-15: Neil Hemann, 347 Park Avenue, Block 1005, Lot 7 (R-15 Zone)

Proposed installation of a residential storage shed not in conformance with the required rear yard accessory setback of 10 feet. Relief is needed from Section 6.1.1B "Schedule of General Regulations." Other nonconforming issues were addressed in variance case No. 20-81.

Neil Hemann was sworn and stated that he has decided not to seek approval for the originally proposed shed but will just be seeking approval for a lean-to that will be attached to the deck. The lean-to will be 12' across and 5' deep and will only require a 1' setback variance.

In response to questions from the Board, Mr. Hemann stated that the lean-to will not block any windows on the house, he intends to build it himself and he will use materials that match the existing house.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

A motion was made by Mr. Nappi, seconded by Mr. Delia, with respect to App.# 24-15: Neil Hemann, 347 Park Avenue, Block 1005, Lot 7 (R-15 Zone) to approve the application with a variance, subject to the conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

CARRIED FROM OCTOBER 8, 2015, WITHOUT FURTHER NOTICE:
App.#16-15: Remax Integrity, 501A Springfield Avenue, Bl. 206, L. 1 (DD Zone)

Proposed new ground sign, 2' x 2' x 52" high off the ground. The carved PVC sign will contain the company name and logo. Relief is needed from Section 5.4.2.DD of the ordinance which allows for façade signs only and prohibits ground signs. On July 16, 2013, the business was issued zoning approval to install one façade sign, a window sign and a message sign on each of the two existing ground signs located at the entry drives to the complex. All of these signs have been installed.

James Mulcahy and Barbara Mulcahy, previously sworn, stated that they have done some research since the last meeting and determined that the sign at the YMCA, which is similar to what they are proposing, was approved and installed with the necessary permits. Mr. Mulcahy stated that he does not understand why that sign was approved and he is not able to obtain approval for his sign.

Mr. Sullivan and Mr. Bernstein explained that each application is unique and the Board does not consider what happened on other parcels. Mr. Sullivan noted that at the last hearing it was proposed that one of the existing signs be removed and that the free standing sign be approved. There was no motion on that proposal and the Board might consider a motion to remove both of the existing plaza signs and move forward with the free standing sign.

Mr. Mulcahy presented Exhibit A-2 – photographs showing the view of the proposed location of the free standing sign and the existing plaza sign that is not visible. In response to a question from the Board, Mr. Mulcahy stated that the landlord has been contacted with regard to the lack of visibility of the existing sign with no response. He would prefer to keep the existing plaza signs in addition to the free standing sign.

Open to Public

The hearing was opened to the public for comments or questions regarding the application.

Julie Lloyd, Downtown Beautification Committee, was sworn. Ms. Lloyd stated the opinion that blade signs are not appropriate for downtown Berkeley Heights and if this one is permitted blade signs would proliferate on Springfield Avenue. She said the Committee would recommend allowing the applicant to change the sign that is on the building to their colors.

Discussion took place with regard to the amount of signage that is needed and desirable. It was noted that the Board prefers signs with footings made of carved wood and that the free standing sign in addition to the window sign, the façade sign and the plaza signs is too much signage.

Mr. Mulcahy stated that there is some benefit from the plaza signs and they are trying to get as much impact as possible. The free standing sign will not be illuminated and will be made of a carved pvc material.

A motion was made by Mr. Sylvester, seconded by Mr. Miller, with respect to App.#16-15: Remax Integrity, 501A Springfield Avenue, Bl. 206, L. 1 (DD Zone) to approve the application with variances, subject to the conditions as discussed including removal of the two plaza signs, and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 3-1 with Mr. Sullivan, Mr. Mustacchi and Mr. Sylvester voting in favor and Mr. Miller opposed.

CARRIED FROM OCTOBER 22, 2015, WITHOUT FURTHER NOTICE:

App.#9-15: 569 Springfield Avenue, LLC, 569 Springfield Ave., Bl. 610, L. 8 (HB-3 Zone)

The applicant appeared before the Board earlier this year but put the application on hold to develop a revised plan. The new proposal is for preliminary and final site plan approval of 7 residential 2-story townhouse units, split between two buildings. (The existing single family dwelling will be demolished.) Relief is needed from Section 6.3.3(A)(4)(c) relating to an increase in density and Section 11.1.2B relating to parking spaces (14 spaces proposed compared with 16 required). A bulk variance under Section 6.1.1B is also needed due to insufficient rear yard setback (of the rear set of townhomes).

August Santore, attorney for the applicant, introduced Robert Gazzale, engineer.

Mr. Gazzale was sworn and accepted as an expert witness. He reviewed the most recent plan revised September 1, 2015. Mr. Gazzale stated that the property is 125' wide by 170' deep in the HB3 zone. There is an existing house on the site and a driveway that will be removed. The site is very steep and the idea of putting a building in the front of the lot with parking behind was ruled out because of the amount of excavation that would be required. Mr. Gazzale explained how they determined the best location for the buildings. He stated that Springfield Avenue is a county road and subject to county requirements for storm water management.

Mr. Gazzale further stated that a variance is needed for rear setback that will only be 13½'. The proposed courtyard will be 21' rather than the 23' originally requested so that eliminates a variance. Mr. Gazzale presented Exhibit A-5 – snapshot of the site including the existing buildings on the properties to the north. The distance from the house directly behind the applicant's property is 69' and each of the other two houses are 80' from the proposed building. Mr. Gazzale presented Exhibit A-6 – colored rendering of the site plan incorporating extensive landscaping that is proposed along the rear property line.

In response to questions from the Board with regard to lighting, Mr. Gazzale stated that the lights in the back of the building will be typical porch lights, the courtyard lighting will be LED down facing lights and there will be decorative lights on the sidewalks, all of which will meet the Township requirements.

Mr. Gazzale stated that there are 16 parking spaces required for the development. They propose to provide 14 on site and four on Springfield Avenue. A variance is required for the Springfield Avenue parking spaces. There are two locations on site that could possibly be used for onsite parking but for those a retaining wall would be needed and the trash enclosure would be eliminated.

With respect to drainage, approval has been received from the County and Mr. Gazzale will confer with Mr. Mistretta as to his October 21 report.

Mr. Gazzale stated that he has reviewed the reports from the Downtown Beautification Committee and the Environmental Committee. As to the Beautification Committee's comments, he stated that a density variance would be needed for a seventh unit and the topography precludes an L-shaped building. As to the Environmental Committee report, the plan will result in a reduction of water run-off and the applicant will agree to whatever the Committee recommends for landscaping.

With regard to building height, Mr. Gazzale explained how the height is calculated and how it was determined that no variance is required.

Mr. Gazzale presented Exhibit A-7 – cross section through the center of the site showing the existing grade of the property and the proposed grade on the driveway side of the building. He noted that there will be a fence on top of the retaining wall and the applicant will put whatever kind of fence the Board requires.

Open to Public

The hearing was opened to the public for questions regarding the Mr. Gazzale's testimony.

Scarlett Doyle, professional planner representing Maria Schaumberg, previously sworn, asked questions regarding the height of the buildings and how the number of stories was determined and the size of the evergreen trees proposed for the rear property line.

Mr. Gazzale explained how the height of the buildings and number of stories were calculated and stated that the evergreen trees will be 12-15' high with a 5-10' spread.

Ms. Doyle presented Exhibits S-1 through S-5 - provisions of the Berkeley Heights ordinance including comments from Ms. Doyle relating to parking requirements, no-parking zones, street parking restrictions on Springfield Avenue, affordable housing, open space, buffering and density.

In response to questions raised by Ms. Doyle with respect to Exhibits S-1 through S-5, Mr. Gazzale stated that the parking requirements are controlled by Residential Site Improvement Standards and he would agree that 2.3 spaces per unit are required. The applicant acknowledges that a variance is needed for two spaces. He is not aware of any restrictions on parking on Springfield Avenue and he investigated whether or not there are any no-parking signs in that area. He has been to the site a number of times and there was parking available on Springfield Avenue.

With respect to landscaping on the rear property line, Mr. Gazzale stated that the plan shows landscaping on the applicant's side of the fence and the rear residents would be looking at the fence. The applicant has offered to provide landscaping on the residents' side of the fence if they want it.

In response to further questions regarding the exhibits and provisions of the ordinance, Mr. Gazzale stated that he has not been involved in the issue of affordable housing and that the applicant will comply with the requirements of the ordinance with respect to open space and buffering. He further stated that there were a number of layouts considered for the proposal and this was the one considered the most suitable.

Mr. Santore objected to the exhibits stating they are not true copies of the complete ordinance and include comments from Ms. Doyle. In addition, some of the information presented has not been testified to by Mr. Gazzale.

In response to questions from Mr. Santore, Ms. Doyle stated that she explained to the Board that she was adding her comments to the sections of the ordinance and she believes the exhibits are credible.

Mr. Bernstein suggested that Mr. Santore write a letter to the Board stating his objections to the exhibits.

Paul Imbimbo, Jr., asked if the accessibility to emergency vehicles such as fire trucks was considered in determining the width of the driveway. He asked if his statement that a fire department engine cannot get into the site would affect the applicant's decision on the design.

Mr. Santore noted that the applicant has not yet received a report from the Fire Department. He objected to the questions being raised by Mr. Imbimbo as a resident that are based on his knowledge as a firefighter.

Mr. Bernstein suggested that Mr. Gazzale meet with the Fire Department and Mr. Gazzale said he would be willing to do so.

Mr. Imbimbo presented Exhibits S-9, S-10, S-11 and S-12 – photographs to provide illustration of the parking issue. He asked if these photos would change Mr. Gazzale's opinion about on-street parking.

Mr. Gazzale stated that the photos do not match the conditions when he was there and the photos would not change his opinion. Mr. Santore noted that the applicant is prepared to provide on-site spaces if the Board requires them.

Jun Hu, 161 Washington Street, asked about the design speed for vehicles along the front of Springfield Avenue. He also asked if the notes on the plan refer to ADA access standards and asked for the location of the detention basin and sanitary sewer.

Mr. Gazzale stated that the design speed is 40 mph, the notes on the plan do not refer to ADA access standards, and he indicated the location of the detention basin and sanitary sewer.

Hu Kai, 161 Washington Street, asked about the design speed and posted speed on Springfield Avenue. She also asked why the buildings cannot be moved forward on the property.

Mr. Gazzale indicated the location of the drainage and utilities that prevent them from moving the buildings forward.

The hearing of the application was carried to the next meeting of the Board on December 10, 2015 with no further notice required. Mr. Santore stated that the applicant will grant an extension through that date.

Adjournment:

A motion was made by Mr. Boyer, seconded by Mr. Smith, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:00 PM.

Regina Giardina, Secretary Pro Tem